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IN THE

Supreme Court of the United States

October Term, 1963.

No. 339.

HENRIETTA O. MURDOCH,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit as of No. 14,223.

Petition for Rehearing

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PETITION FOR REHEARING.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition of Henrietta O. Murdoch respectfully represents:

As the Court of Appeals in the case at bar writes:

> "The pith of her argument is that Mr. Murdoch fraudulently induced her to part with her stock in the Murdoch Company for an amount less than subsequent disclosure revealed the book value to be; that Mr. Murdoch, individually, owed her no duty to pay income on her interest in the Murdoch Company; that the only source to which she could look for income was the Murdoch Company by way of dividends and that she did not make the company a party to her suit."

It is not suggested anywhere that there is anything wrong with her argument.

This is what is taught in law school:

> "Even more, as they (the law schools) teach what is, the legislature, courts, and commissions are busy rescinding their dogma." Irwin Panter, Esq., of the Chicago Bar, in the *Illinois Bar Journal*, January, 1963.

Another instance that:

> "The life of the law has not been logic: it has been experience." *The Common Law*, Oliver Wendell Holmes.

A Secretary of the Navy is a co-defendant in a fraud action involving stock operations which, like *Murdoch*, is settled out of court. *Murdoch* establishes a pattern for tax

saving in the settlement of fraud cases. O Tempora! O Mores!

Like Richard the Third, John P. Murdoch, Jr., wanted the whole kingdom. Out with the nephews! For it was not the widow that John P. Murdoch, Jr., wanted out—it was her sons.

John P. Murdoch, Jr., defrauded his brother's widow in 1945 while her two sons (employed in the business founded by their grandfather, John P. Murdoch) were away in the armed forces of the United States, her son, John P. Murdoch, 3rd, being overseas.

John P. Murdoch, Jr., has no male issue.

So the widow asked for an accounting.

She never got one before settlement.

It was not until *after the conclusion of the trial* in the Tax Court that any financial information became known to her when Judge Raum ordered the income tax returns of the Murdoch Company made available to her attorney (See Record, p. 25a).

When the figures disclosed that her claim was really for $157,179.45, and was settled for $36,500.00, promptly her counsel filed a petition with the state court to set aside the settlement and to open up the case. This is still pending in the state court.

Here's a howdy do. What happens taxwise if she is successful in the state court?

The *trial* in the Tax Court was an utter waste of time. It made its findings *solely on the stipulated facts*. For example, here is part of the cross-examination of John P. Murdoch, Jr. (Record, pp. 24a-25a):

"Q. The important thing of the John P. Murdoch Company is the business. You could do that business anywhere?

A. Yes.

Q. And the neighborhood adds nothing to it, the location?

A. No.

Q. It is the name John P. Murdoch Company, that is the big thing, isn't it?

A. Yes.

Q. And that was your father's name?

A. That is right.

Q. And he started the business?

A. Yes, sir."

We are correct on the law. **All the cases,** common sense—and logic—hold that **"the nature of the basic claim"** determine the tax liability.

Our cross-examination was to the point.

The *only* way to decide against us is to write—as did the Tax Court—that *"somehow or other"* we are wrong.

What a way to run a railroad

Wherefore your petitioner prays your Honorable Court to grant a rehearing of her Petition for Certiorari.

HENRIETTA O. MURDOCH, *Petitioner.*

By: HENRY D. O'CONNOR,
Attorney for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay; also, that this Petition is restricted to the grounds above specified.

HENRY D. O'CONNOR,
Attorney for Petitioner.